

**WHEN RECORDED RETURN TO:**

Pam DeMouth, City Clerk  
City of Ankeny  
410 W. First St.  
Ankeny, IA 50023

Preparer Information: Seana E. Perkins, 220 West First St., Ankeny, Iowa 50023

(515) 963-3557

SPACE ABOVE THIS LINE FOR RECORDER

**DEVELOPMENT AGREEMENT BY AND BETWEEN  
THE CITY OF ANKENY, IOWA AND  
KIMBERLEY PROPERTIES, INC.**

WHEREAS, the City of Ankeny, Iowa (hereinafter the “City”) and Kimberley Properties, Inc. (hereinafter “Developer”) have agreed that the subdivision of the property from the existing single agricultural lot to 84 single family detached residential lots located north of Ashland Ridge Elementary School and approximately 130 feet south of the NW 32<sup>nd</sup> Street and NW Ash Drive intersection would not be detrimental to the City; and

WHEREAS, the City has received a Final Plat application for Ashland Ridge Plat 1 which includes 20 single family detached lots; and

WHEREAS, through the approval process for Ashland Ridge Plat 1 Preliminary Plat, as approved by the City Council on May 3, 2010, Outlot ‘W’ was identified as a water quality and detention area and square footage in Outlots ‘X’, ‘Y’ and ‘Z’ were designated to be used toward the necessary parkland dedication; and

WHEREAS, the Developer will not plat Outlots ‘Y’ or ‘Z’ until later phases and the full improvement of Outlot ‘W’ would be premature at this time; and

WHEREAS, the Developer cannot confirm the precise timing of the future subdivision plats; and

WHEREAS, in order to satisfy the City park site dedication requirements as specified in City Code Section 200.35(1)(A) (Criteria for Requiring Park Land Dedication) for Ashland Ridge Plat 1, the Developer requests that the City defer the park site dedication requirement until a future phase of the Ashland Ridge Development; and

WHEREAS, the deferred park site dedication shall be part of a future conveyance of real property, of the approximate size and location shown as Outlots 'X', 'Y' and 'Z' on attached Exhibit "A", that the Developer proposes to dedicate to the City and to the Ankeny Community School District in order to satisfy the park site dedication requirement specified in the City's subdivision regulations in Section 200.35(1)(A) (Criteria for Requiring Parkland Dedication) for Ashland Ridge Plat 1, as well as future Ashland Ridge plats; and

WHEREAS, the Developer shall also comply with City Code Section 200.35(D) (Payment in Lieu of Park Land) as the City anticipates that additional park land will be required in addition to Outlots 'X', 'Y' and 'Z'.

NOW, THEREFORE, in consideration of the mutual promises of the parties contained herein, the Developer and its successors or assigns and the City hereby agree as follows:

1. The Developer shall dedicate real property of the approximate size and location shown as Outlots 'X', 'Y' and 'Z' on attached Exhibit "A" to the City and to the Ankeny Community School District in accordance with the Ankeny City Code and at no cost to the City as a credit toward the park site dedication requirements of the City with Ashland Ridge Plat 1 and future plats of the Ashland Ridge Development.

2. In the event that additional real property is required to meet the park site dedication requirements, the Developer shall provide a payment in lieu of park land in an amount not to exceed \$11,280, as shown on the attached Exhibit "B" contemporaneous with the dedication of Outlots 'X', 'Y' and 'Z'.

3. The Developer shall provide a Performance Bond, in a form satisfactory to the City, for the total improvement of Outlot 'W' as shown on the Ashland Ridge Construction Plans with the Final Plat for Ashland Ridge Plat 1.

4. At such time as 75 percent of the land area adjacent to Outlot 'W' is platted the Developer shall improve Outlot 'W' as illustrated on the approved construction plans and shall dedicate Outlot 'W' to the City of Ankeny.

5. This Agreement shall be governed by the laws of the State of Iowa.

6. In the event a party hereto fails to perform its obligations under this Agreement or breaches a covenant, warranty or representation of this Agreement, the other party shall give to the alleged defaulting party written notice of the alleged default and of the actions necessary to cure the default. If the default is not cured within 30 days from the date of notice, the party not in default may exercise all remedies available at law, or in equity, including specific performance.

7. This Agreement contains the entire agreement between the parties. This Agreement may not be changed or modified in any manner, unless a written instrument is executed by the parties.

8. All agreements, covenants, representations and warranties made herein are intended to

survive until termination of this Agreement. Upon compliance in full by the Developer, this Agreement shall be terminated by Resolution of the City Council of the City of Ankeny, Iowa.

9. Any uncertainty or ambiguity existing herein shall not be interpreted against a party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally.

10. Each party agrees to fully support, coordinate and cooperate on the documentation. Each party will, whenever it shall be reasonably requested to do so by another party, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, such further conveyances, confirmations, instruments, or further assurances and consents as may be necessary or proper, in order to effectuate the covenants and agreements herein provided. Each party will cooperate in good faith with the other parties and shall execute, acknowledge, and deliver documents or requests in order to satisfy the conditions set forth therein and carry out the intent and purposes of this Agreement.

11. Any consent or approval required herein shall not be unreasonably withheld; provided, however, that this Agreement is subject to the approval of the City Council of the City of Ankeny, Iowa.

12. Neither the method of computation of funding nor any other provisions contained in this Agreement nor any acts of any party shall be deemed or construed by the Developer or by any third person to create the relationship of partnership or joint venture or of any association between the parties.

13. The undersigned officers of the parties covenant and confirm that this Agreement has been approved, and its execution authorized, by the Developer and the City Council of the City of Ankeny, Iowa, and that the undersigned officers have been authorized to enter into and execute this Agreement on behalf of the Developer and the City.

14. The City has found and determined that this Agreement serves and accomplishes a public purpose and is in the best interests of the City and its citizens and residents.

15. All notices or requests under this Agreement shall be given by certified mail, postage prepaid, return receipt requested, to the addresses shown below.

16. The Developer agrees that this Development Agreement shall be effective and binding from and after the approval hereof by resolution of the City Council and shall be binding on any and all subsequent titleholders, transferees and assignees.

**City:**

City of Ankeny  
410 West First Street  
Ankeny, IA 50021  
Attn.: John Peterson

**Developer:**

Kimberley Properties, Inc.  
2785 N. Ankeny Boulevard, Suite 22  
P.O. Box 369  
Ankeny, IA 50021  
Attn.: William B. Kimberley

Each properly addressed notice or request sent by certified mail shall be deemed given and served upon being actually received by the addressee or being rejected by the addressee. The City or the Developer shall have the right to send notices by overnight delivery which notices shall be deemed given and served upon actual receipt by the addressee or rejection by the addressee.

IN WITNESS WHEREOF, the parties hereto have caused the Agreement to be executed by their duly authorized representative on this the \_\_\_\_ day of \_\_\_\_\_, 2010.

**KIMBERLEY PROPERTIES, INC.**

By: \_\_\_\_\_  
William B. Kimberley, Manager

**CITY OF ANKENY, IOWA**

By: \_\_\_\_\_  
Steven D. Van Oort, Mayor

**STATE OF IOWA, COUNTY OF POLK, ss:**

On the \_\_\_\_ day of \_\_\_\_\_, 2010,  
before me, a Notary Public in and for the said State,  
personally appeared William B. Kimberley, to me  
personally known, who, being by me duly sworn, did say  
that that person is Manager of said Kimberley Properties,  
Inc. and that said instrument was signed on behalf of the  
said Kimberley Properties, Inc. by authority of its board of  
\_\_\_\_\_ (directors or trustees) and the said \_\_\_\_\_  
acknowledged the execution of said instrument to be the  
voluntary act and deed of said Kimberley Properties, Inc.  
by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for said State of Iowa

Attest:

By: \_\_\_\_\_  
Pamela DeMouth, City Clerk

**STATE OF IOWA, COUNTY OF POLK, ss:**

On the \_\_\_\_ day of \_\_\_\_\_, 2010,  
before me, the undersigned, a Notary Public in and for the  
State of Iowa, personally appeared **STEVEN D. VAN  
OORT** and **PAMELA DeMOUTH**, to me personally  
known, who, being by me duly sworn, did say that they are  
the Mayor and City Clerk of the City of Ankeny, Iowa, a  
municipal corporation; that the seal affixed to the above and  
foregoing instrument is the corporate seal of said municipal  
corporation, and that said instrument was signed and  
contained in the Resolution adopted by the City Council of  
Ankeny, Iowa, on the \_\_\_\_ day of \_\_\_\_\_,  
2009, and the said **STEVEN D. VAN OORT** and  
**PAMELA DeMOUTH** acknowledged the execution of  
said instrument to be their voluntary act and deed and the  
voluntary act and deed of said municipal corporation, by it  
and by them voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa